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Rights of internally displaced persons

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, submitted in accordance with General Assembly resolution 70/165 and Human Rights Council resolution 32/11.

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Report of the Special Rapporteur on the human rights of internally displaced persons

Summary

The present report outlines the main activities undertaken by the Special Rapporteur on the human rights of internally displaced persons since his last report to the General Assembly.

The thematic section considers outcomes and commitments on internal displacement of the World Humanitarian Summit held in Istanbul, Turkey, in May 2016. The Summit provided a timely opportunity to consider how to better prevent and respond to humanitarian crises and meet the needs and protect the rights of those affected, including internally displaced persons. This landmark conference set a goal to reduce internal displacement by 50 per cent by 2030. The Special Rapporteur considers essential steps to reduce displacement through prevention and durable solutions, and provides recommendations to promote strategic, monitored and time-bound actions to that end.

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I. Introduction

1. The present report is submitted to the General Assembly by the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, pursuant to General Assembly resolution 70/165.

2. Section II provides an overview of the activities of the Special Rapporteur, section III considers internal displacement in the context of the World Humanitarian Summit and its outcomes, section IV discusses key elements to prevent and reduce internal displacement and section V provides a series of conclusions and recommendations.

II. Activities of the Special Rapporteur

3. In June 2016, the Special Rapporteur submitted his final annual report (A/HRC/32/35) to the Human Rights Council providing a review of his activities and a consideration of major challenges and emerging issues in the field of internal displacement. His recommendations were welcomed by the Council in its resolution 32/11, which renewed the mandate of the Special Rapporteur for a further three years. Below he provides a summary of his activities over the reporting period.

4. The Special Rapporteur undertook an official visit to Honduras (A/HRC/32/35/Add.4) from 23 to 27 November 2015. He found that internal displacement caused by criminal gangs, known as *maras*, is an invisible epidemic affecting whole communities with families forced or compelled to abandon their homes. With few protection measures in Honduras, internally displaced persons may join irregular migrant routes and face exploitation from human traffickers and smugglers. They often face expedited deportation that does not take account of genuine protection concerns. The Government must strengthen legal, policy and institutional frameworks and take action to tackle the root causes of displacement, as well as provide protection and durable solutions for displaced persons. The Government undertook to draft a law on internal displacement during 2016.

5. At the time of submission of the present report, the Special Rapporteur was seeking to conduct official visits to Nigeria and Colombia to consult those Governments and other stakeholders on the situation of internally displaced persons and progress towards achieving durable solutions for them. He had also confirmed an official visit to Afghanistan to take place in October 2016 to consult on both new and protracted displacement situations. Reports on these visits will be presented to the Human Rights Council at its thirty-fifth session.

6. The Special Rapporteur conducted working and follow-up visits to numerous countries. He conducted working visits to the African Union in Ethiopia, and to Kenya, South Sudan, Uganda and Zambia between 17 August and 26 September 2015, in order to consult with national authorities, the United Nations and other stakeholders on progress in implementing the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention). In April 2016 he conducted working visits to Burundi and the Democratic Republic of the Congo in view of the ongoing and developing displacement situations. In August he undertook a follow-up visit to Honduras and a working visit to El Salvador to consider issues of gang violence and related

displacement, and in September he will conduct follow-up visits to Ukraine, Serbia and Kosovo[1] and Georgia.

7. The Special Rapporteur participated in the dialogue convened by the United Nations High Commissioner for Refugees on protection challenges in Geneva in December 2015; in a regional conference on human rights in the Arab world in Doha in January 2016; in the World Humanitarian Summit in Turkey in May 2016 and in a preparatory meeting for the Summit with African Union member States in Ethiopia in January 2016; in the humanitarian segment of the Economic and Social Council in June 2016; and in a regional event on the theme of a call to action on protection needs, including with respect to forcible displacement, held in Costa Rica in July 2016.

8. The Special Rapporteur continued his engagement with the African Union to promote ratification and implementation of the Kampala Convention. He urges African States to ratify the Convention. It is of utmost importance to move to an operational phase supported by a conference of States parties, as required under the Convention and which should be established without delay with a mandate to adopt a framework for reporting by States and monitoring of implementation of the Convention. He urges other regional governmental organizations to pursue the adoption of new regional standards on internal displacement.

9. The Special Rapporteur continued to support the mainstreaming of the human rights of internally displaced persons within the United Nations system and the wider humanitarian community, notably by participating actively in the Inter-Agency Standing Committee. His participation at the level of principals has helped to ensure and enhance collaborative approaches and strong links with key United Nations agencies, as well as other international organizations and civil society. He commends the Committee for its strong focus on the issue of displacement.

10. The Special Rapporteur considers that the mandate on human rights of internally displaced persons has created an important voice on and for millions of internally displaced persons globally. The Human Rights Council and the General Assembly, among other bodies, have recognized its catalytic role in raising awareness of the alarmingly high numbers of internally displaced persons, addressing their development and specific needs, including through mainstreaming internal displacement issues into all relevant parts of the United Nations system. In its resolution 70/165, the Assembly requested the Secretary-General to continue to provide the Special Rapporteur, from within existing resources, with all assistance necessary to strengthen and carry out his mandate effectively.

11. Mr. Beyani considers that a special rapporteur acting in a voluntary, external and independent capacity is no longer adequate to cope with the complexity and scope of global internal displacement today. In his 2016 report to the Human Rights Council (A/HRC/32/35), he recommended that consideration be given to establishing a special representative of the Secretary-General on internally displaced persons, with appropriate staff and resources, working within and outside the United Nations and in dialogue with Member States and all stakeholders. This would

[1] All references to Kosovo in the present document should be understood to be in compliance with Security Council resolution 1244 (1999) and without prejudice to the status of Kosovo.

demonstrate the commitment of the United Nations and the international community to addressing internal displacement effectively.

III. World Humanitarian Summit: an agenda to reduce internal displacement

12. On 23 and 24 May 2016, the first World Humanitarian Summit was held in Istanbul, Turkey. It brought together some 9,000 participants from 173 Member States, including 55 Heads of State, thousands of representatives from civil society and non-governmental organizations and hundreds of private sector representatives, with the shared objective of better preventing and responding to humanitarian crises.[2] It was the culmination of a process of consultation, in which the Special Rapporteur was actively engaged,[3] and provided a unique platform to share and discuss ideas, practices and solutions. It sought to achieve high-level commitments at the national, regional and international levels to inspire an ongoing process of change and improvement in responses to crises.

13. The Summit brought much needed attention to internally displaced persons at a time when their numbers have reached unprecedented levels. The Internal Displacement Monitoring Centre (IDMC) estimates that there were 40.8 million people internally displaced worldwide as a result of conflict and violence at the end of 2015, an increase of 2.8 million from its 2014 estimate and the highest figure ever recorded.[4] The grave situation of millions of internally displaced persons requires renewed attention, the rethinking of approaches to prevention, addressing root causes and responses, and concerted action at all levels. To date the challenges are not being adequately met and many of those affected by internal displacement are in dire and often life-threatening situations, often for years on end. The Summit emphasized that this situation must change and challenged all stakeholders to make that change real.

14. The Special Rapporteur informed the Summit that internally displaced persons are among the most vulnerable in crisis-affected States and are often at greater risk of harm within their own countries. They often lack adequate shelter or resources, have inadequate assistance, support and protection and may be traumatized by conflict or disaster. Millions reside outside camps in cities or informal settlements, where many are hard to reach or neglected; in short, they are among the world's most vulnerable people. While much global political and media attention is currently focused on refugee and migrant flows across borders, greater attention and support must be given to protection of persons displaced within their countries of origin. They should not be left behind, in keeping with the theme of the Summit.

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[2] See the Chair's summary, entitled "Standing up for humanity: committing to action", available from https://consultations2.worldhumanitariansummit.org/bitcache/5171492e71696bcf9d4c571c93dfc6dcd7f361ee?vid=581078&disposition=inline&op=view.

[3] The Special Rapporteur participated in regional consultations for West and Central Africa, held in Côte d'Ivoire; the Middle East and North Africa, held in Jordan; and Latin America, held in Guatemala; and in the final consultations in Geneva.

[4] Alexandra Bilak and others, "Global report on internal displacement" (Geneva, Internal Displacement Monitoring Centre, 2016). Available from www.internal-displacement.org/globalreport2016/.

15. The present report considers the important messages and outcomes of the Summit, the core responsibilities addressed and the commitments made to advance protection and assistance to internally displaced persons as well as durable solutions for them. Importantly, the Summit challenged States and the international community to achieve an ambitious target: to reduce internal displacement in a dignified and safe manner by 50 per cent by 2030. The report seeks to provide a resource to help achieve that target through practical steps that should be taken by States, regional bodies, the international community and other stakeholders. It calls for the target to be met in full conformity with international standards, including the Guiding Principles on Internal Displacement of 1998 and the Inter-Agency Standing Committee Framework on Durable Solutions for Internally Displaced Persons, with legitimate reductions achieved through prevention and the implementation of durable solutions.[5]

16. In advance of the Summit, the Secretary-General, in his report entitled "One humanity: shared responsibility" and its annex containing the "Agenda for Humanity" (A/70/709), recognized that the number of internally displaced persons, refugees and asylum seekers has reached nearly 60 million and that "forced displacement is neither a short-term challenge nor primarily a humanitarian one: it is a persistent and complex political and development challenge". In the light of the unprecedented global challenges, the Special Rapporteur welcomes the Secretary-General's bold proposal to turn the trend around and begin the essential task of preventing and reducing internal displacement.

17. The 2030 Agenda for Sustainable Development and its 17 Sustainable Development Goals include references to internally displaced persons as falling within the category of "vulnerable groups". However, this new Summit initiative creates a timely new goal and global commitment specifically addressing internal displacement head on. If achieved, in line with international standards, it has the potential to achieve real and lasting progress towards a solution to internal displacement. The goal recognizes that addressing and reducing internal displacement is also key to addressing and reducing the increasing flows of refugees and asylum seekers across international borders.

18. The Secretary-General's Agenda for Humanity lays out innovative and creative approaches: States should invest in political solutions to end the causes of displacement and in the return, integration or resettlement of the displaced; develop national legislation, policies and capacities for the protection of displaced persons and their integration into national social safety nets, education programmes, labour markets and development plans; recognize displaced people as socioeconomic assets rather than "responsibilities" and incentivize the development of local markets and private sector activity; direct appropriate national resources and international financing towards national and local systems that address their needs and those of host communities; ensure that humanitarian and development actors, local authorities and private sector enterprises work collectively, across institutional divides and mandates and in multi-year frameworks, to end aid dependency and promote self-reliance; and adopt and implement regional and national legal and policy frameworks on internal displacement.

[5] The present report was drafted before the adoption of the final document of the World Humanitarian Summit and therefore does not reflect the content of that document in its consideration of the issues.

19. These innovative and creative global approaches cannot be achieved through "business as usual". The Summit challenged the world to undertake a "fundamental shift in our approach to internal displacement ... one that goes from meeting immediate humanitarian needs to one that preserves the dignity and improves the lives and self-reliance of displaced persons". Such new approaches will require humanitarian and development actors to work together differently towards the common goal of reduction of displacement. Equally, national Governments were urged to deliver political will and resolve to address the causes of displacement, including conflict, and to support internally displaced persons into sustainable situations of improved lives and livelihoods.

20. Putting the most vulnerable people first was a major Summit theme, with the objective of leaving no one behind, which was one of five key responsibilities identified in line with the 2030 Agenda. World leaders and other participants at the Summit agreed to "reach the furthest behind". It was made clear that this category includes displaced people globally. The Special Rapporteur was one of the high-level leaders at the round table in which core commitments that are directly relevant to internally displaced people were addressed.[6] These are:

> **Core commitment 1.** Commit to a new approach to addressing forced displacement that not only meets immediate humanitarian needs but reduces vulnerability and improves the resilience, self-reliance and protection of refugees and internally displaced persons. Commit to implementing this new approach through coherent international, regional and national efforts that recognize both the humanitarian and development challenges of displacement. Commit to take the necessary political, policy, legal and financial steps required to address these challenges for the specific context.
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> **Core commitment 2.** Commit to promote and support safe, dignified and durable solutions for internally displaced persons and refugees. Commit to do so in a coherent and measurable manner through international, regional and national programmes and by taking the necessary policy, legal and financial steps required for the specific contexts and in order to work towards a target of 50 per cent reduction in internal displacement by 2030.
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> **Core commitment 3.** Acknowledge the global public good provided by countries and communities which are hosting large numbers of refugees. Commit to providing communities with large numbers of displaced population or receiving a large number of returnees with the necessary political, policy and financial support to address the humanitarian and socioeconomic impact. To this end, commit to strengthen multilateral financing instruments. Commit to foster host communities' self-reliance and resilience, as part of the comprehensive and integrated approach outlined in core commitment 1.
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> **Core commitment 5.** Commit to actively work to uphold the institution of asylum and the principle of non-refoulement. Commit to support further accession to and strengthened implementation of national, regional and international laws and policy frameworks that ensure and improve the protection of refugees and internally displaced persons, such as the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to

[6] Core commitment 4 is not reflected here as it relates solely to refugees.

the Status of Refugees, the Kampala Convention and the Guiding Principles on Internal Displacement.

21. These commitments provide a valuable starting point for renewed and innovative national and international attention to internally displaced persons. To that end, in a statement to the high-level round table the Special Rapporteur addressed each core commitment in turn and proposed concrete recommendations that could be used by the United Nations system to achieve the commitments that are reflected in the different sections and recommendations of the present report.

22. Several States and organizations made specific commitments on internally displaced persons, notably as follows: the European Union committed to implement its strategic vision on forced displacement, including promoting collaboration between humanitarian and development partners at the outset of crises, to strengthen data collection and analysis and to engage with Governments to ensure the inclusion of displaced persons in national development plans; the United Kingdom of Great Britain and Northern Ireland committed to increase multi-year humanitarian funding to protracted displacement situations; the United States of America committed to increase funding for humanitarian action and to increase financing sustainability in protracted displacement situations; Uganda committed to host a secretariat for the Kampala Convention; Somalia shared its plan to adopt a policy on internally displaced persons, in line with the Convention; the Philippines committed to adopt a national bill on internally displaced persons; and the World Bank vowed to tackle forced displacement as a high priority.

23. Several countries pledged to prioritize access to education for internally displaced persons (Malta, Portugal). A new education platform (Education Cannot Wait) was launched at the Summit. This platform could serve to mobilize additional funding and galvanize new partners to make sure that internally displaced persons and other vulnerable children have access to education.

24. The Summit presented to participants five core responsibilities under which concrete commitments should be made: (a) political leadership to prevent and end conflicts; (b) uphold the norms that safeguard humanity; (c) leave no one behind; (d) change people's lives: from delivering aid to ending need; and (e) invest in humanity. Below, the Special Rapporteur considers each of these responsibilities in the context of the goal to reduce internal displacement.

A. Political leadership to prevent and end conflicts

25. The nexus between conflict and internal displacement is clear and it is evident that the most important measures that States can take to reduce internal displacement are measures to prevent conflict before it takes place and resolve ongoing conflicts. Numerous global leaders recognized the centrality of political will to effectively prevent and end conflicts, address root causes, reduce fragility and strengthen good governance; yet brutal conflicts continue to break out and fuel massive increases in internal displacement.

26. The massive displacement figures alone do little to reveal the devastating impact of conflict on civilians, particularly where international humanitarian law and human rights law are violated. Prevention and resolution of conflict are primarily the responsibility of national authorities. While, as recent experience of

conflicts demonstrates, not all can be prevented or easily resolved, some conflict and violence can be prevented. It requires political will and leadership, but also concerted and timely action, strategic planning, institutional and governance structures and dedicated resources. With these in place, States can take effective steps in the area of prevention of conflict and internal displacement.

27. A deeper understanding of the causes of conflict and displacement is required. The Special Rapporteur has highlighted that where a history of violence or conflict exists, perhaps along ethnic or religious lines or due to general or gang violence that has led to population displacements, Governments can take concrete national measures to prevent violent clashes and displacement in the future. Such measures may include specific protection and policing initiatives to safeguard vulnerable communities, anti-discrimination and social integration policies, dialogue and reconciliation initiatives aimed at reducing the possibility of violence breaking out, as well as economic or social policies to remove the triggers of violence that may exist in such issues as poverty, discrimination or inequality.

28. Carrying out risk assessments to identify communities that may be at risk of conflict and displacement would enable Governments to put in place effective prevention measures or to respond rapidly with contingency planning in place when displacement occurs. Prevention requires the identification of who may be at risk of displacement, where they are, and why, as well as an assessment of what preventive measures are required. In his 2016 report to the Human Rights Council (A/HRC/32/35) the Special Rapporteur urged greater understanding of the vulnerability of some disadvantaged and marginalized groups to violence and displacement, including ethnic and religious minorities and indigenous peoples.

29. Establishing early warning mechanisms for conflict and resulting displacement based on research and indicators can be helpful in predicting and preventing displacement. Indicators may include a history of ethnic, religious or other conflict or violence; significant social inequality between groups; the exclusion (in law or in fact) of some groups from political office, positions of power or employment in state institutions; evidence of discrimination and violent attacks against those belonging to certain groups; and identification of conflict and displacement triggers such as elections, among many others.

30. Improved political leadership must be reflected in the recognition of national challenges, including internal displacement, and a political resolve to address them comprehensively. In numerous States, including those affected by generalized, gang-related, ethnic or other forms of violence, large-scale internal displacement issues are not fully recognized or addressed. Consequently, legal and policy safeguards and protection and assistance measures are absent and some States avoid their primary responsibility for protecting and assisting internally displaced persons. While some States downplay the extent of displacement, others close sites or camps hosting internally displaced persons without achieving durable solutions. Recognizing internal displacement is a prerequisite to preventing and reducing it, including through durable solutions.

B. Upholding the norms that safeguard humanity

31. A consistent message of the Summit was that full respect for and implementation of international law, including international humanitarian law and

international human rights law and standards, is vital to the protection of those affected by crises. The Summit provided a strong message that abiding by international laws and standards is an obligation that must be upheld in practice and offers the "last protection against barbarity". Nevertheless, the targeting of civilians and residential areas, including attacks on camps for internally displaced persons, the besieging of populations and restrictions on civilians seeking safety is frequent in some ongoing conflicts. Displacement could be reduced if international humanitarian law was respected by all parties to armed conflict, in particular the principles of distinction, proportionality and precaution and the prohibition on ordering the displacement of the civilian population for reasons related to an armed conflict, unless their security demands it. Improving compliance with international humanitarian law and increasing efforts to protect civilians and limit the harm they can be exposed to is vital to reducing displacement.

32. Internally displaced persons are frequently subjected to a wide range of violations of their rights. In addition to attacks on civilian areas forcing them to flee their homes, such violations include arbitrary detention, summary or arbitrary execution, disappearance, torture and ill treatment, sexual and gender-based violence, restrictions on freedom of movement and access to safety, and violations of economic and social rights. Greater attention must be given to the protection of internally displaced persons and ensuring that their fundamental rights are protected and their humanitarian needs are met. Access to justice and legal remedy for internally displaced persons is an often neglected concept in humanitarian situations that must come to the fore, recognizing them not only as assistance recipients but rights holders.

33. The Special Rapporteur urges respect for the Guiding Principles on Internal Displacement globally, and the Kampala Convention in Africa. Internally displaced persons retain their human rights and guarantees stipulated in the Guiding Principles even in emergencies or armed conflict, and such rights provide the foundation upon which assistance, protection and durable solutions can be implemented. He was among participants recognizing the wider value of human rights norms prior to as well as during conflict and as a means of preventing violence and conflict. The equal weight given to international human rights law alongside international humanitarian law in the Summit constitutes an important recognition that human rights must be protected and rights-based approaches employed as essential elements of prevention and protection in all phases of humanitarian and development responses.

34. In the 2005 World Summit Outcome, Heads of State recognized the Guiding Principles as an important international framework for the protection of internally displaced persons. They constitute a vital articulation of minimum standards for States, from prevention of displacement to protection during displacement, and provide guidance on applicable legal principles for protection and assistance, return, resettlement or reintegration. Regional frameworks, including the Kampala Convention, national policies and legal frameworks are also essential to ensuring that international standards are translated into regional and State law. Responses to internal displacement are hampered by the lack of domestic legal and policy frameworks related to internally displaced persons.

35. The Special Rapporteur is concerned that knowledge of standards relating to the rights of internally displaced persons, including the Guiding Principles and the

Framework on Durable Solutions, and their implementation is poor. A new era of capacity-building and operationalizing existing norms is required to increase awareness among national authorities responsible for upholding them and the wider populations who they exist to protect. Respecting and ensuring respect for such norms by non-state armed groups and terrorists is now more important than ever before.

36. Incorporating the Guiding Principles into regional human rights frameworks remains much needed. African States and the African Union have shown leadership, while much work remains to ensure that the Kampala Convention is ratified by all African States and implemented, including by establishing a conference of States parties. Creating such a mechanism will galvanize action and promote implementation of the Convention. It could develop tools, programmes and resources to allow it to be a regional authority on internal displacement that is able to provide practical assistance to States and foster regional solidarity to confront the challenges, including conflicts, disasters and climate change.

37. In his report for the World Humanitarian Summit (A/70/709), the Secretary-General stated that such "instruments and policies should be developed and applied in other regions and countries", making a strong call for further normative development. The Special Rapporteur urges other regional and subregional intergovernmental bodies to commit to processes leading to the adoption of new regional standards on the human rights and protection of internally displaced persons, with monitoring and advisory bodies in place as key regional tools to tackle internal displacement.

38. In Africa, the evolution of a regional framework for internally displaced persons has helped to clarify the roles and responsibilities of States. The Kampala Convention requires States to incorporate its provisions into domestic law and to designate an authority responsible for coordinating activities aimed at protecting and assisting internally displaced persons and assign responsibilities to appropriate organs, including cooperation with international organizations or agencies. Ratifying States must adopt measures, strategies and policies on internal displacement at the national and local levels, taking into account the needs of host communities. They must provide funds for protection and assistance and incorporate principles of the Convention into peace negotiations and agreements aimed at finding sustainable solutions to internal displacement.

39. These requirements have resulted in a higher and increasing level of legal, policy and institutional developments in the African region. Numerous countries, including some in Europe, Asia and Latin America, have also adopted or are in the process of drafting national laws and policy documents on internal displacement. This is a positive trend but one which should be greatly enhanced as a measure of preparedness across all States in all regions. National laws and policies provide legal guarantees to internally displaced persons that are essential to the protection of their rights in practice, as well as establishing a legal framework for the allocation of budgets and funds dedicated to their assistance.

C. Leaving no one behind

40. The message of leaving no one behind has been at the core of international processes to address deficits in development and humanitarian action, including the

2030 Agenda for Sustainable Development, and now the World Humanitarian Summit. Identifying, reaching and assisting internally displaced persons and other most-vulnerable populations must be the highest priority for the present and future efforts to prevent and respond to humanitarian crises. This commitment demands that States and the international community pay new attention and take new and innovative action to protect those at risk of or experiencing internal displacement.

41. Internally displaced persons are some of the most vulnerable, having lost their homes, livelihoods, security and social and community networks and support. Many suffer from family separation during flight and trauma and health problems related to displacement and/or conflict or disasters. They may be at risk when they are present in or close to ongoing conflicts or disasters, or having to fend for themselves with little access to humanitarian or development assistance. The majority are outside of camps and difficult to reach. Innovative and creative approaches are needed to integrate their protection and assistance needs into development processes.

42. It is frequently some of the most marginalized and most vulnerable in societies, including national, ethnic or religious minorities, or indigenous peoples, who are at risk of displacement. Conflict or disaster may create a downwards spiral of vulnerability in which already marginalized populations face displacement which exacerbates their vulnerability and places them into highly perilous situations of insecurity and extreme poverty, usually driving them to informal settlements in urban areas in search of anonymity and livelihoods. Displacement may be combined with discriminatory attitudes or policies, including denial or deprivation of citizenship, and neglect of the primary responsibility for protection as required under international standards.

43. Particular challenges face some people within internally displaced populations, including older persons, persons with disabilities, unaccompanied minors, or members of the lesbian, gay, bisexual or transgender community. Women are made particularly vulnerable by displacement, including to sexual or gender-based violence and other human rights violations, and consequently require specific protection measures. A key protection element is disaggregated data to provide an evidence base to build a profile of internally displaced persons and assess their needs according to their circumstances. Such data is often lacking and this gap reinforces the significance of the work carried out by bodies such as the Joint Internally Displaced Person Profiling Service (JIPS; see www.jips.org/en/home).

44. The plight of those in protracted displacement is relatively neglected. Failure to resolve protracted displacement accounts in large measure for the increasing populations of internally displaced persons at the global level, as new waves of displacement add to protracted layers of displacement. The longer the duration of displacement, the lower the prospect that durable solutions will be achieved. Equally, internally displaced persons outside camps are often assumed to have found their own solutions (see A/HRC/19/54). Most have not and some have chosen to remain invisible owing to protection concerns. Different methodologies are required, such as helplines and outreach programmes to identify and profile them, assess their needs in the overall context of the hosting communities and address such needs using humanitarian and development approaches. Addressing such internally displaced populations is essential to achieving national goals to solve and reduce internal displacement.

D. Changing people's lives: from delivering aid to ending need

45. The relationship between humanitarian and development actors has been the subject of perennial discussion. In the Chair's summary, the Summit recognized that humanitarian needs can no longer be viewed in isolation from broader sustainable development efforts that tackle the root causes of prolonged and recurrent need. The Summit took an important step towards transcending the humanitarian-development divide while reinforcing the importance of respecting humanitarian principles and space. A commitment to action on collaborating in a new way of working[7] was signed by the Secretary-General and eight United Nations entities and endorsed by the World Bank and the International Organization for Migration.

46. The commitment to action emphasizes that new ways of working require using resources and capabilities better, improving Sustainable Development Goal outcomes for people in situations of risk, vulnerability and crisis and shrinking humanitarian needs over the long term. It requires galvanizing new partnerships and collaboration, including the private sector, local actors and multilateral development banks, to provide additional capabilities and resources to achieve collective and measurable outcomes, based on a shared understanding of sustainability, vulnerability and resilience. Operationally, it will require shared data, analysis and information, joined-up planning and programming processes and more effective leadership, as well as new financing modalities to support collective outcomes.[7] In this new way of working, internally displaced persons must be taken fully into account by States and international partners in their efforts to achieve the Sustainable Development Goals, as examined by the Special Rapporteur in his 2015 report to the Human Rights Council (A/HRC/29/34).

47. The Special Rapporteur has consistently emphasized that transcending the humanitarian-development divide is essential for achieving durable solutions for internally displaced persons. A commitment to reduce internal displacement means a commitment to achieve durable solutions, which goes beyond the capacity of humanitarian actors alone and requires the integration of development actors at the outset of internal displacement. This will require increasing the understanding of what durable solutions are in practice and the complex process that is required to achieve them, as laid out in the Framework for Durable Solutions.[8]

48. The Framework states that "a durable solution is achieved when internally displaced persons no longer have specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination resulting from their displacement". It outlines three routes to durable solutions (sustainable reintegration, local integration or integration in another part of the country) and provides a starting point for analysis, advocacy and programming. Eight criteria determine the extent to which a durable solution has been achieved: safety and security; adequate standard of living; access to livelihoods; restoration of housing, land and property; access to documentation;

[7] See https://consultations2.worldhumanitariansummit.org/bitcache/50b4cd3ad07469f44235f8a4c60353dfda17dbb0?vid=581741&disposition=inline&op=view.

[8] The Brookings Institution-University of Bern Project on Internal Displacement, "Inter-Agency Standing Committee Framework on Durable Solutions for Internally Displaced Persons" (Washington, D.C., 2010). Available from www.unhcr.org/50f94cd49.pdf.

family reunification; participation in public affairs; and access to effective remedies and justice.

49. A key objective of the Special Rapporteur is to ensure universal adherence to such standards. He is currently working with JIPS on a project to establish indicators or benchmarks to guide States and all stakeholders on measuring progress towards durable solutions when implementing the Framework.

50. Some poor practices have been evident and may constitute or lead to violations of the rights of internally displaced persons. Such policies include the closing of camps and collective shelters without meeting international standards for the closure of camps or settlements or carrying out the necessary processes and safeguards for internally displaced persons, let alone ensuring durable solutions, and the payment of cash grants, which are often a transitory measure aimed at improving the well-being of internally displaced persons and yet are sometimes mistaken for durable solutions. Forced or unsustainable return not in safety or dignity, do not constitute durable solutions and must not be considered by States or the international community as constituting progress towards reducing internal displacement.

51. While displacement frequently happens rapidly, achieving durable solutions requires a much slower and often complex process, challenging the expertise, resources and capacity of the State. Reconstructing homes and infrastructure, re-establishing livelihoods, entire communities and institutions, and ensuring justice and psychological healing takes time, focused effort and resources. Protecting internally displaced persons and supporting solutions requires leadership, commitment and consultation with and participation of the internally displaced themselves. It requires improving self-reliance and integrating internally displaced persons into national safety nets, education programmes, labour markets and development plans, building on local capacity and knowledge.

52. Positive developments relating to durable solutions exist and should be developed, among them the Secretary-General's Policy Committee decision on durable solutions for internally displaced persons and returning refugees (2011), which recognized the enormous gap in response for these groups in the aftermath of conflict. Some States such as Côte d'Ivoire and Mali have developed durable solution strategies. The Solutions Alliance (see www.solutionsalliance.org) was established in 2014 and brings Governments and humanitarian and development partners together to solve concrete problems. The work of JIPS helps to develop a nationally owned evidence-base for operational decision-making and IDMC enhances relevant analysis at the global level, while the United Nations Development Programme (UNDP), the World Bank and multiple donors have committed to address internal displacement as a development issue, and not just a humanitarian one.

53. At the Summit, States, United Nations agencies, international and local organizations and the private sector committed to strengthen laws and policies to protect internally displaced persons and to support solutions to displacement. The World Bank and development actors also committed to engage earlier to support the self-reliance of internally displaced persons and host communities. Indeed, better integration of humanitarian and development efforts at the onset of displacement is essential to building resilience and self-reliance, both of which are key elements that can lead to durable solutions within a rights-based approach.[2]

E. Investing in humanity

54. The Summit reinforced the crucial role of financing as the key enabling and catalytic factor towards meeting and reducing needs relating to internally displaced persons. Significantly enhanced resources are required to meet the challenge of reducing internal displacement. The Special Rapporteur has consistently encountered challenges to assistance and protection for internally displaced persons and to making progress towards durable solutions directly linked to funding shortfalls and too-short funding cycles that restrict the potential for longer-term planning and programmes. Without significant changes to the funding system the resolution of displacement will be severely hampered in practice.

55. There remains a vital need to increase direct, timely and predictable humanitarian financing across protection and related humanitarian sectors, including food, health, basic needs, water and sanitation. Funding must also be enhanced for neglected sectors, including livelihoods, social cohesion and early recovery. In the Syrian Arab Republic and Iraq significant funding shortfalls have reduced the ability of the United Nations to provide essential assistance, leaving internally displaced persons and others in dire need. As at 6 December, the 2015 Syrian Arab Republic humanitarian response plan had received only $1.17 billion (41 per cent) of overall funding requirements. The United Nations has raised its 2016 global humanitarian funding appeal to a record $21.6 billion from $19.7 billion.[9] By the end of June, the 2016 appeal had so far received only a quarter of the total amount requested.[10]

56. New financing modalities are needed to support the Summit's vision of new ways of working and to ensure that funding is available for emergency humanitarian response, development work, and for the earliest transition into the recovery without time lags. An important Summit outcome was a commitment to a "grand bargain" to promote and increase predictable, multi-year, unearmarked, collaborative and flexible humanitarian funding towards greater efficiency, effectiveness, transparency and accountability of humanitarian action. It seeks to ensure that more funds reach national and local partners who are well placed to work with local communities, and that more donor money reaches those most in need. This has importance for the optimum utilization of funds, potentially allowing more flexibility for cash transfers and recovery programmes.

57. The primary responsibility of the State to protect and assist internally displaced persons extends to funding. While some States are among the poorest and require significant international support, others are middle income and must allocate appropriate resources from national budgets to meet their needs. The international humanitarian and development community should not be long-term primary deliverers in situations where the State can step up and bear the cost of its own responses. This helps to ensure that international support is targeted where it is

[9] According to an analysis group, Development Initiatives, the amount requested through United Nations appeals in 2015 was $19.8 billion, a slight drop from the previous year, but contributions fell by considerably more, leaving an unprecedented shortfall of 45 per cent ($8.9 billion).

[10] Humanosphere, "United Nations increase 2016 humanitarian appeal to record $21.6 billion", 29 June 2016, available from www.humanosphere.org/basics/2016/06/u-n-increases-2016-humanitarian-appeal-to-record-21-6-billion/.

needed and strengthens the capacity of the State to respond to ongoing and future displacement situations.

58. Resource constraints must not be used to justify lack of progress towards durable solutions. The Special Rapporteur has urged affected State Governments to establish budgetary allocations and legally guarantee domestic funds that can be allocated to the challenges of displacement over the long-term and until durable solutions are achieved. In Azerbaijan he welcomed a guaranteed allocation of oil revenues for support to internally displaced persons and he recommended that other States, including Iraq, consider similar policies. In the Philippines, local government units must allocate 5 per cent of their internal revenue allotment to "calamity funds" from which funds can be drawn for relief and recovery programmes.

IV. Key elements to prevent and reduce internal displacement

59. The following sections set out some key actions and principles that the Special Rapporteur considers to be essential to meeting the goal of reducing internal displacement.

A. Strengthening national governance and protection systems

60. Good governance is an essential element of national efforts to prevent and reduce internal displacement. The Guiding Principles underline the obligations of States to take preventive measures to avoid displacement. However, States often lack adequate governance structures to prevent, prepare for and mitigate against the consequences of internal displacement before the onset of a displacement crisis. All States, particularly those at risk of, or experiencing, internal displacement should establish effective and accountable governance structures to respond to all phases of internal displacement. The need to improve disaster risk governance, for example, has been recognized, including in the context of the Sendai Framework for Disaster Risk Reduction 2015-2030, as disasters can affect any State.

61. In his 2015 report to the General Assembly (A/70/334), the Special Rapporteur provided recommendations on the governance and management of internal displacement, from prevention to durable solutions. Key among them is to put in place institutional frameworks at the earliest possible time. This is particularly important for maintaining national readiness and ongoing cross-sectoral attention to internal displacement. He suggested the designation of a high-level institutional focal point to lead in coordinating national policy on and responses to all forms of displacement. A focal point has to be a high-level mechanism exercising authority over dedicated line ministries, departments, agencies and other expert bodies.

62. Composed of representatives of different ministries, such a mechanism could coordinate the national responsibility for internally displaced persons over each line agency or ministry and be responsible for maintaining common roles and differentiated responsibilities across government bodies and other stakeholders. Such a mechanism helps to ensure holistic responses that recognize, for example, the important relationship between housing, employment and livelihood and service

provision, as well as education, health, reproductive health care for women and the need to ensure protection at every phase of internal displacement.

63. Key elements of good governance include establishing monitoring mechanisms and early warning systems for conflict and disaster-induced displacement, maintaining disaster risk reduction and management systems, and the implementation of mitigation and preparedness measures. It is imperative to provide essential training to local and subnational authorities, who are often first responders, including about international standards and their obligations towards internally displaced persons. What must be clearly understood is the long-term need for governance and dedicated attention to internally displaced persons until durable solutions are achieved. Such mechanisms exist, for example in Côte d'Ivoire, Kenya, the Philippines, Sri Lanka and Serbia. The United Nations and international partners should provide technical cooperation and capacity-building, including training of bodies in charge of coordination.

B. Improving data gathering, analysis and profiling

64. To prevent and improve responses to internal displacement, it is imperative to have comprehensive and reliable information upon which to base both humanitarian and development interventions. This includes baseline data from which to make informed decisions, measure progress, create data tracking and monitoring mechanisms, and comprehensive trends analysis. Reliable data and evidence are a precondition for good policy and programming and are vital for strengthening coordination and collaboration between different actors. Many States lack accurate information about the number, profile and needs of internally displaced persons. Globally, the available figures on displacement do not reveal the full picture. As IDMC points out, current global estimates indicate only the scale of displacement caused by conflict and yearly estimates of disaster-induced displacement. Serious gaps exist in data on those displaced by disasters. Slow-onset disasters, development projects and generalized violence constitute significant data blind spots.

65. The lack of reliable and comprehensive data on internal displacement hampers the ability to respond effectively and put in place immediate and longer-term measures to reduce displacement. Detailed profiling of situations of internally displaced persons is needed to ensure that information goes beyond simple numbers and basic needs to include population data disaggregated by sex, age, location and diversity, particular protection or other concerns, coping mechanisms and capacities within internally displaced populations as well as knowledge about host communities they live with and affect. Gathering data on those outside camps has proven difficult and there is a need to find creative solutions to ensure that they do not fall through protection and support nets, including by exploring new technology.

66. Where States lack the capacity for data gathering and analysis they should collaborate with expert international partners. Among important data initiatives, the Special Rapporteur highlights JIPS, an inter-agency service helping Governments, humanitarian and development agencies to acquire, maintain and update reliable data and analysis on internal displacement situations, including disaggregated population data. The Service recognizes that informed solutions must be based on a more complete data picture of internally displaced persons. In Honduras, a

Government-led profiling exercise supported by JIPS helped to build an evidence base and inform policy development on internal displacement providing a good example that could be replicated.

67. At the Summit, Member States committed to improve practices around data collection, analysis and early warning, including the establishment of a global risk platform. The Secretary-General committed to making all United Nations plans and programmes risk informed. On behalf of seven multilateral development banks, the World Bank and the European Investment Bank committed to close collaboration in order to generate more evidence and data to guide solutions in fragile States with an objective of promoting economic resilience.

68. While there is general agreement on the need to engage and involve development actors in displacement responses at an earlier stage, this must be informed by data and analysis to best identify where, when and how development actors should intervene to best effect. Improving "development-relevant" data and analysis on displacement will help to justify or trigger a more "displacement-sensitive" development approach in affected countries.[11] While it remains difficult to generate an analysis that serves the information needs of all actors and to reach agreement on evidence-based priorities for response through genuinely collaborative efforts, this has been achieved in several contexts including integrating displacement issues into national development plans. A recent profiling exercise in Mogadishu, supported by JIPS, is a good example of this.

C. Engaging internally displaced persons as partners

69. New approaches need to engage displaced persons as partners and not simply beneficiaries. These approaches should achieve better consultation with and the participation of displaced communities as part of a broader process of assessment and informed response, including in the application of durable solutions. This helps to ensure the human agency of internally displaced persons as those with the greatest understanding of the community's needs and vulnerabilities, but also its wishes, expectations, skills and resilience capacity. Assessments of needs should go hand in hand with assessment of potential, including the capacity to lead or benefit from resilience, recovery and livelihood initiatives.

70. Internally displaced persons must have a greater say and role in shaping the nature of assistance and support that they receive and the solutions targeted at them. The Special Rapporteur has found that the common message from internally displaced persons is that they are deprived of their dignity, have little hope and feel that nobody is listening to them, let alone consulting them. Meaningful consultation and participation of internally displaced persons guarantee the durability and legitimacy of solutions and help to re-establish dignity and hope. The voices and views of displaced women, older persons, youth and those with disabilities for example, must be given equal weight to ensure that solutions are appropriate and meet the needs of all.

[11] Chaloka Beyani, Natalia Krynsky Baal and Martina Caterina, "Conceptual challenges and practical solutions in situations of internal displacement", *Forced Migration*, vol. 52 (May 2016). Available from www.fmreview.org/solutions/beyani-baal-caterina.html.

71. The skills and abilities that exist within displacement-affected communities should be better utilized and developed. Recognizing internally displaced persons as economic agents offers new possibilities to employ the talent and capacity that exists within internally displaced populations as an essential component of the transition towards durable solutions. Assessment of their capacity for recovery is also key to engaging development partners based on evidence and data that demonstrates the potential to move beyond the emergency assistance phase.

72. Strengthening the resources and capacity of national non-governmental organizations, community and faith-based organizations and others, including volunteer groups, helps to ensure that local partners are closely involved in achieving local- and area-based solutions. As stated by the Secretary-General "We must become better at supporting and strengthening national and local capacities rather than replacing them" (see A/70/709, para. 170). Not only is this valuable in the short-term, it helps to build national capacity to respond to long-term displacement challenges.

73. As the Special Rapporteur highlighted in his report on his country visit to the Syrian Arab Republic (see A/HRC/32/35/Add.2), UNDP focused on building the resilience of the affected population in the Syrian Arab Republic to stabilize livelihoods and strengthen capacities to cope with the shocks and negative impacts of the crisis.[12] In 2014, UNDP scaled up its early recovery and resilience interventions targeting 14 governorates. By March 2015, it was implementing over 100 recovery, resilience and livelihood projects, many in close collaboration with local partners.

D. Strategic national action plans on internal displacement

74. National responses to internal displacement are often not integrated into national action or development plans. They are often ad hoc and conducted without clear time frames or long-term strategies or budgets in place. Attention may wane over time, resources may diminish and initial plans are revised or go unimplemented. In some cases displacement becomes protracted and transitional solutions become permanent. The political will and programme momentum may dissipate or disappear leaving internally displaced persons abandoned. Maintaining attention and resources through to the completion of durable solutions would benefit greatly from the establishment of national action plans under the framework of the Summit goal to reduce internal displacement by 2030.

75. This target must be considered as a concrete commitment to action on a level with commitments and targets established under the 2030 Agenda for Sustainable Development. States affected by or facing the threat of internal displacement should consider strategic national action plans to resolve displacement, with clear time frames and monitoring and evaluation mechanisms in place, and with focused attention to achieve durable solutions. This should be done nationally and for each displacement scenario in view of the specificities of each situation and in full consultation with internally displaced persons.

[12] See United Nations Development Programme, "365 days of resilience in Syria", 2014, available from www.sy.undp.org/content/syria/en/home/library/poverty/365-days-of-resilience-in-syria.html.

76. Action plans should be drawn up in collaboration with national partner institutions and international humanitarian, development and donor partners. Consultation, verification and approval processes should be established and budgets developed to cover immediate responses and medium and longer-term requirements for durable solutions. Where appropriate, States could seek donor funds to support implementation of national action plans. Donor Governments and international partners are urged to consider specific donor relationships with States based on action plans and an established process with monitoring and accountability mechanisms.

77. Models for cooperation between national and international partners include those established previously in the context of the Millennium Development Goals. The Millennium Development Goal country reports and poverty reduction strategy papers, which States develop in cooperation with UNDP, have proved to be valuable tools and modalities. Similar advisory, technical assistance and operational partnerships between States and international partners could be envisaged for national internal displacement action plans. Engagement with international partners would help States to articulate and refine national strategies and programmes addressing prevention and specific displacement scenarios.

78. Action plans should involve a process of consultation, research and profiling, the findings of which could inform detailed assessments and strategic planning. They should be in full conformity with the Framework on Durable Solutions and constitute an application of this Framework to real displacement challenges. Action plans should cover all displacement (new and protracted), including that caused by conflict, disaster, development and generalized violence.

79. A programme and time frame for implementation, evaluation and monitoring should be developed and targets and indicators established towards which progress can be assessed. Action plans should be complementary to and function in harmony with national commitments under other international processes, including mechanisms and action processes in the context of the 2030 Agenda for Sustainable Development.

E. Establishing targets and indicators for internal displacement

80. Establishing targets and indicators is essential to meeting the 2030 Sustainable Development Goals for States and the international community. Establishing targets and indicators to monitor progress on solving internal displacement will also be vital to achieving reduction. Global targets and indicators should be established to help inform and guide the development of national level targets and indicators specifically tailored to national and local situations. Key to these efforts is accurate and consistent data.

81. The Special Rapporteur, in collaboration with JIPS, has initiated a project on "Informing responses to support durable solutions for internally displaced persons"[13] to promote the implementation of the Framework on Durable Solutions.[8] The project's objectives are to develop a library of tested indicators, methodologies and tools to measure progress towards durable solutions in displacement situations, and provide guidance and capacity-building material for Governments and

[13] See www.jips.org/en/profiling/durable-solutions.

humanitarian and development actors. It aims to support Governments and humanitarian and development actors to pursue evidence-based joint responses through transforming the Framework into field appropriate tools.

82. The Summit commitment to establish an annual update to review progress in taking forward and implementing its commitments will be an essential means to monitor progress in the reduction of internal displacement through durable solutions, as well as helping to maintain momentum on key objectives and commitments. A commitment to action platforms will be established and made publicly accessible, allowing alignments and individual and joint commitments made at the Summit to be reflected and participants to be held accountable for the commitments they have made.

F. Enhancing international solidarity to prevent and reduce internal displacement

83. The message "one humanity: shared responsibility" is one that resonated throughout the Summit process and urges greater solidarity to better prevent and respond to humanitarian crises. This can be achieved through greater commitments from more countries to make resources available for long-term humanitarian financing to help to integrate humanitarian and development approaches for solving internal displacement. However, shared responsibility must go beyond funding alone if it is to truly fulfil the vision of solidarity between and across countries.

84. In the area of disaster risk reduction, mitigation and response, much scope and many opportunities for further international cooperation and solidarity in prevention and preparedness exists and should be developed. As has been demonstrated in disaster contexts, such as Typhoon Haiyan in the Philippines and the 2004 Indian Ocean earthquake and tsunami, numerous countries rapidly respond with funds, personnel and equipment when disaster strikes. Expanding the scope and nature of this collaboration and assistance beyond the immediate aftermath of disaster to prevention, preparedness and longer-term recovery should be part of a new global compact. Shared responsibility and solidarity to better find and implement solutions to disaster-related displacement should mean opening the doors to shared technology use and technical assistance between States in a spirit of international cooperation.

85. This means increasing international focus and cooperation on risk reduction and resilience based on the 2015 Sendai Framework and the 2015 Paris Agreement on climate change. The Summit addressed displacement in the context of disasters and climate change and participants called for the development of an international mechanism and legal framework for the protection of those displaced by the adverse impacts of climate change. The 2010 Cancun Agreements recognized climate-induced displacement, and the Special Rapporteur examined this in his report to the General Assembly in 2011 (A/66/285). Disaster-related internal displacement is closely linked with disaster-related cross-border displacement. He welcomes the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change endorsed by 110 countries in 2015 under the Nansen Initiative.

86. For some countries, expertise in dealing with displacement is lacking and must be quickly developed. Benefiting from technical assistance and the experience of countries that have gone through displacement encourages good practice and sharing of experiences. Establishing a central repository of guidelines, tools and best practices would assist States and could be developed to also function as a platform for dialogue between States and different international actors. In this respect, the Solutions Alliance, established in 2014, may provide a useful platform and resource. It works to support responses to forced displacement through collaborative approaches among States and humanitarian and development actors, among others, and to enable the transition of displaced persons away from dependency on aid towards increased resilience, self-reliance and development.

V. Conclusions and recommendations

87. The Summit gave much needed and timely attention to internal displacement. It set States and the international community an important commitment: to reduce internal displacement by half by 2030 in a safe and dignified manner. To achieve this, innovative and creative approaches, bold initiatives and new and enhanced partnerships and collaborations are required. Foremost, it requires political will and leadership to prevent and resolve conflicts that are a major global driver of forced displacement. Reducing displacement requires a new model of national and international action that is predictive rather than reactive and is focused on early warning, preparedness, mitigation and adaptation.

88. The task will not be achieved through business as usual. It must be achieved without shortcuts, using evidence-based approaches, informed and accurate disaggregated data and best practices consistent with respecting and ensuring respect for the human rights of internally displaced persons. It requires a commitment to preventing new displacement and to neutralizing the triggers and drivers of displacement, as well as achieving durable solutions and putting in place the necessary processes and resources. Closely monitoring State practice to ensure that reductions in displacement are fully compliant with international standards will be essential.

89. While the onus is on States as the bearers of the primary responsibility to prevent and resolve crises and displacement, the message of "one humanity: shared responsibility" underpinned the Summit. Internal displacement must be understood as a global phenomenon with national, regional and international implications that should engage us all in new prevention strategies and in finding appropriate and durable solutions for those already displaced. Without protection, dignity and safety within their countries, today's internally displaced persons become tomorrow's refugees in search of safety, protection and assistance. To deal with this nexus and continuum, forging a new era of international solidarity to prevent, where possible, and to respond effectively to crises and their root causes is essential.

90. Delivering better means learning the lessons and continuing to do what is done well while improving on it. It means being more strategic and collaborative, and working differently towards shared goals. Transcending the humanitarian-development divide will allow integrated action that invests in

building self-reliance and resilience from the outset. To reduce displacement as a result of climate change, sudden and slow-onset disasters and conflict, we must act now and establish effective safeguards and benchmarks that will avoid future lost generations of displaced. No one should be left behind and the World Humanitarian Summit has taken important steps, but its commitments and promise must be realized in practice.

91. The Special Rapporteur recommends that States:

(a) Invest in peace and peacebuilding efforts, taking necessary steps to prevent and resolve conflicts and remove the conditions and triggers for conflict as part of their good governance, human rights and development obligations. Addressing factors including inequality, discrimination, poverty, injustice and corruption, are essential factors to prevent and reduce displacement;

(b) Comply fully with international humanitarian law and human rights law and respect the Guiding Principles on Internal Displacement. States affected by or at risk of internal displacement should adopt legislation and policy on internal displacement in line with international and regional law and standards;

(c) Ensure that governance and institutional frameworks on internal displacement are in place with the necessary budgets to implement strategic national action plans. Affected States should consider allocating a guaranteed percentage of national revenues to displacement and disaster preparedness, early warning, mitigation and response;

(d) Publicly undertake to meet the commitment to resolving and reducing internal displacement and develop national durable solutions and action plans in partnership with national and international partners with long-term financial allocations guaranteed;

(e) Establish baseline, evidence-based approaches to internal displacement based on disaggregated data, in collaboration with national and international partners, that provides a detailed national picture of internally displaced persons and their protection needs, as well as a comprehensive profile of situations and host communities;

(f) Based on international standards and the establishment of national targets and indicators, set time-bound and monitored objectives for the reduction of internal displacement in keeping with the Sustainable Development Goals, with particular attention given to situations of protracted displacement;

(g) Reduce the risk of new and secondary displacement by addressing the root causes of displacement as a high priority, including by taking conflict prevention measures and measures to mitigate against the impact of disasters;

(h) Undertake displacement risk assessments and establish early warning mechanisms to enable States to better predict, prepare and respond to disasters, conflict and all potential displacement situations;

(i) Give a high priority to finding solutions to protracted displacement, in consultation with internally displaced persons. Durable solutions must be

approached on a humanitarian-development basis. Where return is not possible or desired, local integration or resettlement should be given due consideration;

(j) Support and fund national and local organizations, non-governmental organizations and community and faith-based organizations to increase their capacity to intervene in all phases of displacement and as key partners in programmes aimed at building self-reliance and resilience and achieving durable solutions;

(k) Identify and take steps to secure durable solutions for internally displaced persons with greater emphasis on those outside camps, and establish policy and programme measures aimed at integrating internally displaced persons into area-based development programmes for host populations;

(l) Invite the Special Rapporteur to visit officially as part of their national displacement prevention, resolution and durable solutions strategies.

92. The Special Rapporteur makes the following recommendations to regional intergovernmental bodies:

(a) The African Union should facilitate a conference of States parties to the Kampala Convention as a vital means to promote its implementation across African States. Member States should commit to reduce internal displacement by at least 50 per cent by 2030 for the African region;

(b) Other regional intergovernmental bodies should take the measures necessary to incorporate the Guiding Principles on Internal Displacement into regional standards as part of their commitments to the outcomes of the World Humanitarian Summit. Regional mechanisms should develop legal frameworks and practical tools to assist States in their responses to internal displacement.

93. The Special Rapporteur recommends that the United Nations:

(a) Strengthen its capacity to address specific protection and assistance needs of internally displaced persons, linked to durable solutions, at the onset of displacement. This requires adopting a new approach to internal displacement, through joint development-humanitarian assessments, analysis and multi-year planning and programming and flexible additional multi-year financing to build self-reliance, resilience and the integration of internally displaced persons into local area-based development approaches;

(b) Make advances in generating better evidence and profiling of internal displacement situations and support durable-solution strategies for internally displaced persons in protracted displacement;

(c) Enhance collaboration with local authorities, civil society and the private sector, to support inclusive development strategies and improve the well-being of both internally displaced persons and host communities, including in urban settings;

(d) Support the strengthening of policy and legal frameworks to protect and foster inclusion of internally displaced persons, and work closely with the African Union and its members to promote ratification and implementation of the Kampala Convention. The United Nations should strengthen its technical capacity-building services to provide expertise to States and regional bodies in

developing national laws, policies and strategies in line with the Guiding Principles;

(e) A special representative of the Secretary-General on internally displaced persons should be appointed, with appropriate staff and resources, working within and outside the United Nations and in dialogue with Member States and all stakeholders. This would strengthen the capacity of the United Nations by establishing a standing office and demonstrate its commitment and that of the international community to addressing internal displacement effectively;

(f) Monitor State practice and progress to ensure that reductions in internal displacement are achieved in compliance with international law and standards.

94. Donor countries should enhance their humanitarian and development funding and review their support in line with the "grand bargain" in order to provide flexible, multi-year, predictable and sustainable funding.

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Item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Human rights and international solidarity

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Independent Expert on human rights and international solidarity, Virginia Dandan, submitted in accordance with Human Rights Council resolution 26/6.

* A/71/150.

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Report of the Independent Expert on human rights and international solidarity

Summary

The present report is submitted to the General Assembly by the Independent Expert on human rights and international solidarity, Virginia Dandan, in accordance with Human Rights Council resolution 26/6. The previous report of the Independent Expert, submitted to the Human Rights Council at its thirty-second session, in June 2016 (A/HRC/32/43 and Corr.1), was a summary of what had transpired during the regional consultations on the proposed draft declaration on the right of peoples and individuals to international solidarity (A/HRC/26/34, annex). Given the substantial amount of information recorded, that report could not include a thorough analysis of concerns that had been repeatedly expressed during the regional consultations.

In the present report, the Independent Expert thus briefly examines four issues selected in the light of the weight of their implications for the final version of the draft declaration to be submitted to the Human Rights Council in June 2017. The discussion of the following issues is thus necessarily narrowed solely in the context of the proposed declaration: updating the preamble to amplify the legal framework for international solidarity; articulating the conceptualization and nature of the right to international solidarity; taking into account both economic, social and cultural rights and civil and political rights in the consideration of the extraterritorial obligations of States; and identifying which non-State actors are being addressed the proposed draft declaration, and elaborating their roles as required by the right to international solidarity.

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I. Introduction

1. The previous report of the Independent Expert on human rights and international solidarity, Virginia Dandan (A/HRC/32/43 and Corr.1), submitted to the Human Rights Council in June 2016 pursuant to Council resolution 26/6, was a summary of what had transpired during the regional consultations that she had convened on the subject of the proposed draft declaration on the right of peoples and individuals to international solidarity (A/HRC/26/34, annex). The purpose of the regional consultation series was to obtain as much input as possible from Member States and other stakeholders with a view to guiding the revision of the draft text by the Independent Expert. A final draft declaration will be presented to the Council in June 2017, at its thirty-fifth session.

2. The Independent Expert, with the assistance of the Office of the United Nations High Commissioner for Human Rights, convened regional consultations with representatives of the Western European and other States region and the Eastern European region in Geneva in April 2015; with representatives of the African region in Addis Ababa in July 2015; with representatives of the Latin American and Caribbean region in Panama City in September 2015; with representatives of the Asia-Pacific region in Suva in November 2015; and with representatives of the Middle East and wider Asia region in Doha in January 2016. The consultations brought together relevant experts and practitioners from Member States; intergovernmental organizations; United Nations agencies, including regional economic commissions; and civil society, including academic non-governmental organizations (NGOs). The series was designed to enable participants to discuss the text of the proposed draft declaration in terms of its logic, structure and content; provide concrete input with a view to clarifying issues seen as arising from the text; and put forward further recommendations for the implementation of the right to international solidarity on the ground.

3. The discussions among participants in the regional consultations generated a wealth of diverse views on topics including the understanding of a right to international solidarity; the perceived links between international solidarity and international cooperation; the role of international solidarity in addressing such issues as development, poverty and inequality, including gender inequality, at the national level and particularly in implementing the new Sustainable Development Goals; the role of international organizations in actively contributing to the promotion and application of international solidarity; and the role of non-State actors in actively promoting international solidarity as a tool for the fulfilment of human rights.

4. Participants provided input, including comments and recommendations of a general nature on the conceptualization of the proposed draft declaration and its structure, substance and organization, as well as more specific and detailed amendments to the text resulting from an article-by-article review. In the light of the substantial amount of information recorded, the previous report of the Independent Expert could include only the highlights of the major issues that had arisen from the regional consultations. However, in her presentation of the report at the thirty-second session of the Human Rights Council, the Independent Expert clarified that all inputs, regardless of whether they were highlighted in the report, would be considered and analysed as she carried out the process of modifying the text of the proposed draft declaration. She also pointed out that the recurring concerns that had emerged from the consultations would be discussed in a subsequent report.

5. A number of concerns were repeatedly expressed and discussed during the regional consultations but could not be analysed thoroughly in the previous report. In the present report, the Independent Expert examines the following four points on the basis of their significance to the eventual revision of the proposed draft declaration into its final form:

(a) Additional and updated legal references, in particular those on customary international law, should be reviewed in order to strengthen the preamble of the draft text and further develop a well-founded legal framework for the right to international solidarity;

(b) Clarification is necessary as to whether the right to international solidarity should be understood as a claimable right or as a principle with moral force and whether it is a right to benefit from, or a right to demand, the application of the principle of international solidarity. In that context, it was suggested that mechanisms of enforcement for such a right be outlined, inter alia, by developing guidelines in which the roles of various stakeholders would be defined and clear examples laid out of actions to enforce a right to international solidarity;

(c) There were concerns with regard to the references to "non-State actors", which should be more specific, as the terminology has been loosely applied to a wide range of actors, including business entities, and NGOs as well as armed groups and terrorist organizations. It is therefore necessary that relevant non-State actors, including transnational corporations and NGOs, be explicitly referred to in the draft declaration, together with clearly articulated roles and obligations;

(d) A greater emphasis on extraterritorial obligations of States would strengthen the added value of the draft declaration. In that context, it is necessary to extend extraterritorial obligations to cover the areas of economic, social and cultural rights and civil and political rights as well as human rights in climate and environmental issues.

6. The arguments presented below were extracted from the varied views expressed, including those emanating from relevant United Nations documents, scholarly publications and the Independent Expert's own first-hand experience working on human rights in terms of both theory and practice. The Independent Expert reiterates that the issues considered in the present report are examined using the proposed draft declaration as a point of departure. Consequently, while research on those issues involved the examination of all their aspects, the report addresses only the essential points to be considered in the process of improving and refining the text of the proposed draft declaration as it stands.

II. Key issues emerging from the regional consultations

A. A legal framework for international solidarity: deriving the right to international solidarity from the sources of international law

Background

7. The Statute of the International Court of Justice, in its article 38, identifies four sources of international law: treaties between States; customary international law derived from the practice of States; general principles of law recognized by

civilized nations; and, as a subsidiary means for the determination of rules of international law, judicial decisions and the writings of "the most highly qualified publicists".[1] That list has often been criticized as no longer complete. The resolutions of the General Assembly, although not legally binding, have an important effect in the process of law-making. They are based on the positions taken by States, reflecting their acceptance and practice, thus embodying a rule of international law as part of the development of customary international law. Some resolutions are part of the treaty-making process, with the treaty text having to be negotiated within the framework of the United Nations among States members of the Assembly. Given the importance of Assembly resolutions in shaping international law, they have become part of the above-mentioned list.[2] This is the context in which to start a brief discussion of customary international law, which, in the view of the participants in the regional consultations, is an important source for a legal framework for international solidarity.

8. Customary international law results from a general and consistent practice of States followed by them out of a sense of obligation.[3] Variations in the formulation of what might be considered a definition of such law recognize the existence of two elements — the practice of States (custom) and their belief in the obligation to follow that practice (*opinio juris*) — that are present in customary law.[4] In determining what constitutes a "consistent practice of States", we could consider the behaviour of States in their diplomatic relations and the official policy statements made in that regard. It may be more difficult, however, to ascertain whether a State is acting out of a sense of obligation or out of courtesy or habit. One of the ways to determine this is to examine the State's acts or omissions in similar situations. Here, it is worth considering the suggestion that, for a practice to be considered customary international law, it does not have to be universally followed, but must nevertheless have obtained widespread acceptance.[5] It is also worth taking into account the notion that international custom is described as unconscious and unintentional law-making and does not arise from a deliberate legislative process.[6] In any case, the definition as formulated in this paragraph suffices for the specific purpose of this section, in which the question of customary international law will guide the discussion in the context of the proposed draft declaration, particularly the text of its preamble, which sets out the legal framework for the right to international solidarity.

9. The framework for international solidarity is derived from three general sources: the Charter of the United Nations; the Universal Declaration of Human Rights and the international human rights treaties; and the multitude of commitments relating to human rights and development that have been adopted by States at United Nations international conferences and summits and in General Assembly resolutions. In previous reports, the Independent Expert began her

[1] See Greenwood, C., "Sources of international law: an introduction", available at www.legal.un.org/avi.

[2] Ibid.

[3] See Sahl, S., "Researching customary international law, State practice and the pronouncements of States regarding international law", available at www.nyulawglobal.org/globalex/Customary_International _Law.html.

[4] Ibid.

[5] See "Customary international law", in *International Judicial Monitor*, vol. 1, No. 5 (December 2006); available at www.judicialmonitor.org.

[6] See Da Rocha Ferreira, A., "Formation and evidence of customary international law", Federal University of Rio Grande do Sul (2013), p. 186; available at https://www.ufrgs.br.

exploration and review of applicable human rights frameworks from which a right to international solidarity could be derived. She reiterates here that the intention of the proposed declaration on the right of peoples and individuals to international solidarity is not to create new norms and obligations, but to signify existing obligations with a view to fostering implementation and accountability with regard to the fulfilment of human rights. In response to comments emerging from the regional consultations to further support the legitimacy of a right to international solidarity, the Independent Expert highlights below internationally recognized legal provisions that are directly linked to the principle of international solidarity.

10. The Independent Expert recalls that, in an earlier report to the General Assembly, of 12 August 2015 (A/70/316), she presented what she called the international normative bases of the principle of international solidarity. She identified them as the Charter of the United Nations, the Universal Declaration of Human Rights and the international human rights treaties that enshrine economic, social and cultural rights and civil and political rights, stressing the specific treaty provisions directly linked to the duty of international cooperation, a constituent element of international solidarity.

11. In addition, the Independent Expert highlighted selected United Nations declarations in the field of human rights and development, referring to them as evidence of the overwhelming manifestation of international solidarity among States in the multitude of commitments and promises relating to human rights and development, and briefly discussed a few of them,[7] in particular the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations; the 1986 Declaration on the Right to Development; and the 1993 Vienna Declaration and Programme of Action.

12. The report also contained a discussion of applicable regional-level frameworks, taking into account a number of regional treaties that integrate the principle of solidarity into their official documents and reaffirm respect for and the protection and fulfilment of human rights.[8] Among them are the Constitutive Act of the African Union, adopted in 2000; the Arab Charter on Human Rights, adopted in 2004; the Charter of the Association of Southeast Asian Nations, adopted in 2007; the Charter of Fundamental Rights of the European Union, which was proclaimed in 2000 and entered into force with the Treaty of Lisbon in 2009; and the Charter of the Organization of American States, adopted in 1948.

13. In the present report, the Independent Expert endeavours to update the legal framework for international solidarity in line with more recent developments in the field of human rights and international solidarity. She emphasizes that, in the process of improving the proposed draft declaration, all materials from research studies and other inputs from various sources, including forums and consultations, will be consolidated, analysed and taken into consideration.

International cooperation as a duty of States

14. Although a complete listing and examination of all relevant declarations of the United Nations is beyond the scope of the present report, the Independent Expert

[7] See A/70/316, paras. 15-19.

[8] Ibid., para. 20 (a)-(c).

reiterates and reaffirms the provisions of Articles 55 and 56 of the Charter of the United Nations, noting that in order to achieve the purposes of the United Nations as set out in the Charter, there is a need for cooperation among States. The 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), annex) goes further. It stresses that States have "the duty to cooperate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international cooperation free from discrimination based on such differences". The Declaration also affirms that "States shall cooperate in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all, and in the elimination of all forms of racial discrimination and all forms of religious intolerance". The Independent Expert reiterates that international cooperation is the instrument through which international solidarity is upheld and realized, as discussed in detail in her earlier report referred to above.[9]

The imperative of international solidarity to address global challenges

15. Following the United Nations Conference on Sustainable Development, held in 2012, the General Assembly adopted the outcome document of the Conference, entitled "The future we want" (resolution 66/288 (2012), annex), in which States, in its paragraph 11, reaffirmed their commitment to strengthen international cooperation to address the persistent challenges related to sustainable development for all, in particular in developing countries. In paragraph 260, States stressed that South-South cooperation should be seen as an expression of solidarity and cooperation between countries, based on their shared experiences and objectives. The document is a veritable and comprehensive road map outlining the collective commitment of States to take action towards sustainable development.

16. "The future we want" contains a long list of aspirations, including in relation to climate change. In effect, it establishes the inextricable link between the environment, the advancement of sustainable development and the fostering of international cooperation and solidarity. In particular, in its paragraph 18, States expressed their determination to reinvigorate political will and to raise the level of commitment by the international community to move the sustainable development agenda forward, through the achievement of the internationally agreed development goals; further reaffirmed their respective commitments to other relevant internationally agreed goals in the economic, social and environmental fields since 1992; and therefore resolved to take concrete measures that accelerate implementation of sustainable development commitments. Three years later, in 2015, the outcome document of the United Nations summit for the adoption of the post-2015 development agenda, entitled "Transforming our world: the 2030 Agenda for Sustainable Development" (General Assembly resolution 70/1), was adopted, its centrepiece being the Sustainable Development Goals, the successors to the Millennium Development Goals, which had expired at the end of 2015.

[9] Ibid., paras. 34-53.

17. The preamble to the 2030 Agenda for Sustainable Development declares the strong commitment that all countries and all stakeholders, acting in collaborative partnership, will implement the plan and embark on a collective journey, pledging that no one will be left behind. Sustainable Development Goal 17 reflects the importance of strengthening the spirit of global solidarity in implementing the Agenda through a revitalized global partnership for development. Similarly, in the outcome document of the third International Conference on Small Island Developing States, entitled "SIDS Accelerated Modalities of Action (SAMOA) Pathway" (General Assembly resolution 69/15 (2014), annex), although States reasserted that the well-being of small island developing States and their peoples depended first and foremost on national actions, they also recognized that there was an urgent need to strengthen cooperation and enable strong, genuine and durable partnerships at the subnational, national, subregional, regional and international levels to address the unique and particular vulnerabilities of small island developing States so as to ensure their sustainable development. In addition, States reaffirmed that small island developing States were equal partners and that empowered, genuine and durable partnerships were based on mutual collaboration and ownership, trust, alignment, harmonization, respect, results orientation, accountability and transparency and that political will was required to undertake and implement long-term, predictable commitments.[10]

18. Solidarity across national boundaries and generations is underlined in the United Nations Framework Convention on Climate Change. Article 3 of the Convention requires that States Parties protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities, with developed countries called upon to take the lead in combating climate change and its adverse effects. This spells out a collective responsibility of all States to safeguard the collective good and to act in solidarity by asking those countries with the most capacity to take on the obligation of actively addressing the common challenges to which they contributed the most, in the spirit of the duty of international cooperation among States.

19. In the outcome document of the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, known as the Paris Agreement, the Conference of the Parties recognized that climate change represented an urgent and potentially irreversible threat to human societies and the planet and thus required the widest possible cooperation by all countries, and their participation in an effective and appropriate international response, with a view to accelerating the reduction of global greenhouse gas emissions.[11] States parties acknowledged the importance of support for and international cooperation on adaptation efforts and the importance of taking into account the needs of developing country parties, especially those that were particularly vulnerable to the adverse effects of climate change.[12] Article 9 (3) of the Agreement stipulates that, as part of a global effort, developed country parties should continue to take the lead in mobilizing climate finance from a wide variety of sources, instruments and channels. The wording of the Agreement implies the obligation to provide assistance to enable developing States parties, especially those most vulnerable, to achieve

[10] See resolution 69/15, annex, paras. 21 and 100.
[11] See FCCC/CP/2015/10/Add.1, decision 1/CP.21, annex.
[12] Ibid.

mitigation and adaptation, thus upholding the principle of a common but differentiated responsibility. Furthermore, the Agreement calls for a type of cooperation that is in line with the principle of partnership based on mutual respect, and acknowledges the importance of the participation of individuals, who should be the ultimate beneficiaries of such cooperation.

International solidarity in financing for development

20. Solidarity plays a seminal role in the framework of financing for development, as first highlighted in the 2002 Monterrey Consensus of the International Conference on Financing for Development and confirmed in the 2008 Doha Declaration on Financing for Development. The 2015 Addis Ababa Action Agenda of the Third International Conference on Financing for Development (General Assembly resolution 69/313, annex) reiterates the need to address such financing in the spirit of global partnership and solidarity.

21. The 2005 Paris Declaration on Aid Effectiveness and the 2008 Accra Agenda for Action (A/63/539, annex) underlined the need to build more effective and inclusive partnerships for development, aligning the strategies of donor countries with the priorities of partner countries and increasing accountability and the predictability of aid. They also underscored the need to enhance the accountability of both donor countries and partner countries to their respective citizens and parliaments for their development policies, strategies and performance.[13]

22. In 2011, the Fourth High-level Forum on Aid Effectiveness brought together, for the first time, Heads of State, ministers, representatives of developing and developed countries, heads of multilateral and bilateral institutions and representatives of various types of public, civil society, private, parliamentary, local and regional organizations in Busan, Republic of Korea. Together, they agreed on the outcome document of the Forum, the Busan Partnership for Effective Development Cooperation, which declared that they were united by a new partnership that was broader and more inclusive than ever before, founded on shared principles, common goals and differential commitments for effective international development. They committed to partner in taking action to facilitate, leverage and strengthen the impact of diverse sources of finance to support sustainable and inclusive development, including taxation and domestic resource mobilization, private investment, aid for trade, philanthropy, non-concessional public funding and climate change finance.[14] They also committed themselves to the establishment of a new, inclusive global partnership for effective development cooperation.

B. The nature of the right to international solidarity

23. The sceptical view has often been expressed that, although international solidarity is an important moral principle and a political commitment, it does not meet the requirements of a legal concept, much less a human rights concept. There is also underlying scepticism in the question of whether the right to international solidarity is to be understood as a claimable right or a right with moral force, and whether it is a right to benefit from international solidarity or a right to demand the

[13] See www.oecd.org/dac.

[14] Full text available at www.oecd.org.

application of the principle of international solidarity. That question stems from the definition of the right to international solidarity contained in the proposed draft declaration on the right of peoples and individuals to international solidarity, which states in its article 5:

> "The right to international solidarity shall be understood as a fundamental human right by which peoples and individuals have the freedom to enjoy, on the basis of equality and non-discrimination, the benefits of a harmonious international society with a just and fair international political and economic order, in which all human rights and fundamental freedoms may be fully realized."

Claiming the right to international solidarity

24. This section of the present report responds to the question referred to in paragraph 23 above and also touches upon other facets of international law pertaining to that question. The Independent Expert tends to agree with the idea that our understanding of a right is "always imperfect and incomplete"[15] and that the claimability of a right ultimately hinges on whether it can be meaningfully and validly claimed against others. This may very well be an essential characteristic of rights, although there are some who believe that claimability is valuable and important, but not necessary. The present report does not delve into this debate among legal academics, but stresses the well-recognized premise that if a right is to be claimable, there must be identifiable rights holders and duty bearers spelling out what demands it generates and who is bound by them.

25. The proposed draft declaration, in its article 6, enumerates the holders of the right to international solidarity and, in its article 7, what that right includes. Similarly, article 8 identifies the duty bearers and lays out their responsibilities in broad terms, while articles 9 to 12 set out more specific obligations. The Independent Expert reiterates that the obligations of States (the primary duty bearers) spelled out in the proposed draft declaration are already existing obligations under the various international human rights treaties. The value of the proposed draft declaration is that it articulates how those obligations are to be applied or implemented in accordance with the requirements of the specific provisions of human rights treaties as set out in the corresponding general comments and general recommendations of the treaty bodies. In that context, the right to international solidarity is a right to demand the implementation of international solidarity so that benefits can be derived from it. The Independent Expert's position is that the right to international solidarity is a claimable right by virtue of its relationship with international human rights law as described above.

26. There was a time when the International Covenant on Economic, Social and Cultural Rights was considered to be a set of mere moral aspirations, vaguely worded for the most part, with no indication of how those rights would be enforced. States ratified the treaty, arguably for strategic purposes. In due course, the Committee on Economic, Social and Cultural Rights — the treaty body mandated to monitor the compliance of States parties with their obligations under the Covenant — began its work of interpreting the provisions of the Covenant, seeking to clarify their meaning and identifying, inter alia, their normative content, the obligations of States and of other actors, and violations of the rights enshrined therein. Those interpretations of the

[15] See Etinson, A., "Human rights, claimability and the uses of abstraction", in *Utilitas*, vol. 25, No. 4 (2013); available at www.adametison.com.

Covenant are the general comments formulated and adopted by the Committee on the basis of its growing body of knowledge acquired through the periodic monitoring of reports of States parties and from United Nations specialized agencies working in the field, as well as from similar reports received from NGOs. The general comments constitute the "soft law" of the Committee, setting norms and standards in connection with treaty provisions and the issues emerging from them.

27. Such standards and norms did not exist when the Covenant first came into force decades ago. At that time, States themselves interpreted and decided how they should implement the rights set out in the Covenant. They adopted the appropriate legislation and put to work or created the institutions necessary to implement it. But even where there was an absence of such legislation, they developed policies, plans and administrative measures to implement the provisions of the Covenant. Anyone can access the existing records of the Committee on Economic, Social and Cultural Rights that document this narrative. In the interest of space and time, the Independent Expert can provide only an anecdotal account based on her experience as a former member of the Committee. She deems it necessary to place on record her views on this matter, owing to its value in justifying her position that our understanding of human rights cannot be perfect and complete from the very start, as exemplified by the international human rights treaties that were not enforceable even as they entered into force. Human rights can be realized as enforceable claims only through the continuous work and efforts of legal and political institutions as well as human rights mechanisms at the national, regional and international levels.

Role of the international community of States in the development of international law and international human rights law

28. Given the limitations on the length of the present report, it is not possible for the Independent Expert to look further into the principle of international solidarity than she has in her previous reports. However, she wishes to touch briefly on the subject of the dynamics of international society and international solidarity, which requires further exploration in the future because of its impact on the role of the right to international solidarity in the possibility of collective enforcement of common principles.[16] From the point of view of solidarism,[17] international society can be defined as what exists when a group of States, conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions.[18] The Independent Expert advances the view that the United Nations and its Charter are clearly illustrative in that regard, even while bearing in mind that there is disagreement among scholars regarding the normative differences between the terms "international society" and "international community". From the solidarist point of view, the common interests and values of States are wide in scope, extending beyond the mere coexistence of States to elevate the individual to a subject of international law. On the one hand, solidarism advances the idea of sustained cooperation on a wide range of issues, including the promotion, protection

[16] See Knudsen, T. B., "International society and international solidarity: recapturing the solidarist origins of the English school" (2000), p. 16; available at http://ecpr.esc/Filestore/PaperProposal/4d037102-75c3-494a-827a-018d7cddeeff.pdf.

[17] A school of thought within the English school of international relations theory.

[18] See Bull, H., *The Anarchical Society: A Study of Order in World Politics*, 2nd ed. (London, Macmillan, 1977), p. 13.

and implementation of human rights, human development and environmental protection. Moreover, it derives the rules of international law from actual agreement among States as indicated by their common practices and treaties.[19] On the other hand, the conventional pluralist approach sees the State as the only legitimate subject of international law and argues that the objective of States in international relations is to maintain relatively peaceful coexistence through the strict observation of the principles of sovereignty and non-intervention. That approach implies that compliance with certain rules and norms is motivated solely by the pursuit of survival and recognition, and it views international law as based on the universal laws of nature, discoverable through the common reason of man.[20]

29. The Independent Expert supports the argument that it is possible for standards of morality to enter the domain of international law and politics, thereby allowing for progressive change through extended interpretations as well as for amendments to international norms and rules. The aim is not to revolutionize existing international law, but to introduce elements of morally informed judgment in the application or development of the rules of international law. While this solidarist doctrine of natural law is confronted with the argument that the law cannot be based on something as disputable as morality and reason, an argument in its favour is that the validity of a legal argument is based not on the nature of its origins, but on how it is received by the international community upon its introduction. Therefore, principles derived from reason and morality may be translated into standard operating procedures, State practice and, ultimately, rules of positive international law and thus possibly gain international recognition that cannot be acquired otherwise.[21] The Independent Expert believes that the same procedure can be applied in developing the right to international solidarity as an enabling right for the realization, promotion and protection of human rights at large.

C. International solidarity and the extraterritorial obligations of States

In the area of economic, social and cultural rights

30. The compliance of States with their extraterritorial obligations has reached a critical stage in this era of globalization, particularly in the economic field, where State and non-State actors exert considerable influence on the realization of economic, social and cultural rights. The 2011 Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights clarify the parameters of the extraterritorial obligations of States and confirm the primacy of human rights among competing sources of international law. Despite the universality of human rights, many States interpret their human rights obligations as applicable only within their own borders.[22]

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[19] See Knudsen, T. B., "International society and international solidarity: recapturing the solidarist origins of the English school" (2000), p. 16; available at http://ecpr.esc/Filestore/PaperProposal/4d037102-75c3-494a-827a-018d7cddcefl.pdf.

[20] Ibid.

[21] Ibid. p. 24.

[22] See Extraterritorial Obligations Consortium, "Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights" (Heidelberg, Germany, 2012); available at www.etoconsortium.org.

31. The Maastricht Principles concern the obligations of States and other actors beyond borders. They point out the duty of international cooperation in general, with principles 19-40 being those with the greatest bearing on the proposed draft declaration. It is not the intention of the present report to dwell on those principles, as they are wide-ranging in scope, with clearly articulated prescriptions for implementation. Moreover, it would be superfluous to discuss the notion of extraterritoriality, as that term is an explicit reference to beyond-border issues that are, in this regard, connected to economic, social and cultural rights.

32. The Commentary to the Maastricht Principles examines in greater detail the complex issues behind the Principles that the drafters had to resolve before the text was finalized. The link between the Principles and international solidarity lies in international cooperation, which is one of the two components of international solidarity, the other being preventive solidarity.[23] The issue of international cooperation is arguably at the very core of the Maastricht Principles and therefore has a strong correlation to the proposed draft declaration. To provide just one example, a part of the Commentary reads, "International cooperation must be understood broadly to include the development of international rules to establish an enabling environment for the realization of human rights and the provision of financial or technical assistance. It also includes an obligation to refrain from nullifying or impairing human rights in other countries and to ensure that non-State actors whose conduct the State is in a position to influence are prohibited from impairing the enjoyment of such rights."[24] That statement raises three issues of direct relevance to the contents of the proposed draft declaration, while at the same time exemplifying the classic threefold typology of human rights obligations: to respect, to protect and to fulfil. Refraining from impairing human rights is the obligation to respect; prohibiting third parties from impairing the enjoyment of human rights is the obligation to protect; and establishing an enabling environment for the realization of human rights is the obligation to fulfil.

In the area of civil and political rights

33. A number of times during the regional consultations, it was urged that the references in the proposed draft declaration to the extraterritorial obligations of States encompass civil and political rights in addition to economic, social and cultural rights. Indeed, the Maastricht Principles, while focusing on the extraterritorial obligations of States in the area of economic, social and cultural rights, explicitly state, in principle 3, "All States have obligations to respect, protect and fulfil human rights, including civil, cultural, economic, political and social rights, both within their territories and extraterritorially."[25]

34. States' policies and actions have an impact on the enjoyment of human rights by individuals within and outside a State's territory. Extraterritorial impacts on civil

[23] For a discussion on preventive solidarity and international cooperation as the two components of international solidarity, see A/70/316, paras. 23-53.

[24] See De Schutter, O, A. Eide, A. Khalfan, M. Orellana, M. Salomon and J. Seiderman, "Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights", in *Human Rights Quarterly*, vol. 34 (Johns Hopkins University Press, 2012), p.1104.

[25] See Extraterritorial Obligations Consortium, "Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights" (Heidelberg, Germany, 2012), I.3.

and political rights, for example, can be observed in the conduct of warfare, territorial occupation and other military actions, migration policies, sanctions and coercive measures, extraordinary rendition, drone strikes and the operation of extraterritorial detention and interrogation facilities for combatants, migrants and refugees.[26] In any case, the issue of the application of States' obligations in the extraterritorial extension of civil and political rights is contested and vague. States take varying positions on the matter, ranging from reluctant willingness to outright rejection.[27]

35. "Jurisdiction" is a contentious issue that adds to the complexity of the discussion. The Maastricht Principles tries to tackle the question of "scope of jurisdiction" in principle 9 and succeeds in identifying another layer of complexity with such issues as the State's effective control and the foreseeable effects of acts or omissions.[28] While some international human rights instruments attach a State's obligations to its jurisdiction, including the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Convention against Torture, as well as such regional instruments as the European Convention on Human Rights and the American Convention on Human Rights,[29] they are silent regarding the scope of applicability of the State party's obligations.

36. The Commentary to the Maastricht Principles, under principle 9, defines the applicability of the International Covenant on Civil and Political Rights, citing existing case law in that respect in support of this definition. For that purpose, "the notion of jurisdiction refers to the relationship between the individual and the State in connection with a violation of human rights, wherever it occurred, so that acts of States that take place or produce effects outside the national territory may be deemed to fall under the jurisdiction of the State concerned".[30]

37. The Independent Expert is satisfied that the brief discussion above sufficiently establishes the possibility of extending the reference to the extraterritorial obligations of States to encompass civil and political rights in the context of the proposed draft declaration. Moreover, in certain situations, the obligations of States apply where their actions and control over a territory justify their responsibility towards affected individuals and groups, even beyond their jurisdiction. In that regard, it may be recalled that the 1992 Rio Declaration on Environment and Development, in its principle 13, requested States to cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction. The

[26] See Wilde, R., "The extraterritorial application of international human rights law on civil and political rights", in *Routledge Handbook of International Human Rights Law* (London and New York, Routledge, 2013), chap. 35, p. 635.

[27] Ibid., p. 636.

[28] See Extraterritorial Obligations Consortium, "Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights" (Heidelberg, Germany, 2012), II.9.

[29] See Wilde, R., "The extraterritorial application of international human rights law on civil and political rights", in *Routledge Handbook of International Human Rights Law* (London and New York, Routledge, 2013), chap. 35, pp. 637 and 638.

[30] See De Schutter, O, A. Eide, A. Khalfan, M. Orellana, M. Salomon and J. Seiderman, "Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights", in *Human Rights Quarterly*, vol. 34 (Johns Hopkins University Press, 2012), p. 1106.

Independent Expert will conduct further studies and examine other sources in order to support the legitimacy of referring to civil and political rights along with economic, social and cultural rights in the context of the proposed draft declaration. The application of the extraterritorial obligations of States in the two areas of rights will set the context for the consideration of climate and environmental issues.

D. Non-State actors and their role in international solidarity

38. Non-State actors are important players in international relations, including, in many cases, with regard to international law and human rights law. They participate in and exert an influence on legal interests and processes. Furthermore, they may have a direct, indirect, formal or informal impact on such legal processes as law-making, law enforcement and dispute settlement. The term "non-State actors" often includes civil society, religious groups, corporations, armed groups and terrorist groups.[31] In the context of the proposed draft declaration, in which the right to international solidarity involves international cooperation and partnerships, article 6 of the Cotonou Agreement[32] offers a more contextualized and appropriate definition of non-State actors, referring to the private sector, economic and social partners including trade union organizations, and civil society in all its forms according to national characteristics. While the same article recognizes both State (local, regional and national) and non-State actors as "actors of cooperation", it stipulates that "recognition by the parties of non-State actors shall depend on the extent to which they address the needs of the population, on their specific competencies and whether they are organized and managed democratically and transparently".[33] The Independent Expert is of the view that that stipulation serves to exclude non-State actors such as armed groups, terrorists and other possible actors whose intentions do not conform to the purposes of cooperation and whose activities are contrary to the concept of democracy and the principle of transparency. Some statements and practices imply that non-State actors have human rights obligations, but these are rarely explicit and are not uniform. To dispel any doubts about human rights obligations, the preamble to the Universal Declaration of Human Rights[34] provides clear standards in that regard.

39. The Independent Expert draws attention to the Cotonou Agreement because of its relevance to the proposed draft declaration, in particular article 8 of the latter, which identifies the duty bearers of the right to international solidarity as "primarily States and non-State actors that work with peoples and individuals and, as such, also bear responsibilities, many of which may be similar and complementary to the duties of States". The article also lays out in broad terms the obligations of States with respect to the human rights treaties that they have ratified. Similarly, it is pointed out that non-State actors shall abide by their ethical responsibilities and codes of conduct and shall respect the right of peoples and individuals to international solidarity. The phrase "as such" reinforces the idea that, in the context of the proposed draft declaration, non-State entities bear duties relating to the right

[31] See Clapham, A., "Non-State actors"; available at http://ssrn.com/abstract=1339810.

[32] Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou in 2000 and revised in 2010, available at www.europarl.europa.eu.

[33] Ibid., art. 6.

[34] Available at www.ohchr.org.

to international solidarity when they work with peoples and individuals. The intention in the formulation of the proposed draft declaration was to considerably narrow the scope of the term "non-State actors" to NGOs that work with communities. However, in the light of the concerns that were raised repeatedly in all of the regional consultations, the roles and the obligations of private business enterprises, including transnational corporations, in the context of the proposed draft declaration are discussed below.

Non-governmental organizations

40. It is difficult to determine how many NGOs are operating in the world today, as there are no reliable statistics in that regard. In any case, the acronym "NGO" has become a familiar term in many languages. Available sources confirm the observation of the Independent Expert that NGOs tend to be best known for undertaking two types of activities: delivering basic services to people who need them and organizing activities to advocate change. They are also active in a wide range of more specialized roles such as assisting in emergency responses during calamities, including extreme weather events, and conducting information campaigns related to public health. In brief, NGOs play different roles in different country contexts. That makes it difficult to make general statements about them. In terms of structure, NGOs may be large or small, formal or informal, local or national, regional or international. Many are externally funded, while others depend on locally mobilized resources.

41. A more common-sense definition of NGOs is focused on those concerned with the promotion of social, political or economic change, an agenda usually associated with the concept of development.[35] This reinforces the idea that NGOs are engaged primarily in work at the local, national and international levels in diverse fields such as health care, microfinance, emergency relief and human rights. In fact, the service delivery work of NGOs has been increasing largely because of donor and government contracts in exchange for funding for such services and related specific tasks, including responding to natural disasters.[36] With the improvements in communications, more locally based groups, referred to as grass-roots organizations or community-based organizations, have also become active at the national level and even the global level through the coalitions that they form through networking.[37] In addition to delivering services, many development NGOs are concerned with advocating changes in policy at the national and international levels. Coalitions and caucuses play a prominent role in transnational networks engaged in advocacy in the areas of human rights, the environment and addressing violence against women.[38]

42. The collective phenomenon of thousands of motivated, well-intentioned NGOs providing public goods in most parts of the world, especially in developing countries, can be a glowing testimony to their increasing popularity. Yet the strengths of NGOs, including their exemplary service to the poor in developing

[35] See Lewis, D., and N. Kanji, "Non-governmental organizations and development", in *Routledge Perspectives on Development* (London and New York, Routledge, 2009), p.7.

[36] Ibid., p.13.

[37] See Willetts, P., "What is a non-governmental organization?" (2006), available at https://www.scribd.com.

[38] See Werker, E., and F. Z. Ahmed, "What do non-governmental organizations do?" (2007), p. , available at: www.hbswk.hbs.edu.

countries, can also produce corresponding weaknesses in their priorities, in terms of agenda-setting, decision-making or the manner in which they deliver their services to people in need.[39] Many NGOs have voluntary codes of conduct, which are obviously self-regulatory, but hardly any system for ensuring accountability, especially in the case of those working at the grass-roots level. This is the rationale for the provisions of article 8 of the proposed draft declaration, which, as noted above, identifies duty bearers and their obligations. In that article, it will indeed be important that the references to "non-State actors" be made more precise and specific, as suggested in numerous comments received by the Independent Expert.

Businesses enterprises and transnational corporations

43. Human rights law was designed to regulate the use of public power over those subject to such power. For that reason, it applies first and foremost to the State, as the holder of public power.[40] Conceptually, however, human rights obligations are almost unlimited in scope in terms of application. They are grounded in human dignity, which applies to all individuals, regardless of whether they are in a position to affect such obligations. The Universal Declaration of Human Rights, the foundation of international human rights law, which speaks of the entitlement of "everyone" to the rights it enumerates, does not identify those to whom such obligations apply. There is thus nothing in human rights theory that precludes the imposition of legal obligations on actors other than States. Indeed, States are hardly the only entities capable of infringing upon human dignity. Optimally, the protection of human rights should therefore extend to all situations in which these rights are threatened, regardless of who puts them in jeopardy.[41]

44. Business enterprises are recognized as powerful forces that can generate economic growth, reduce poverty and increase demand for the rule of law, thereby contributing to the realization of a broad spectrum of human rights.[42] But if they are to be optimal, businesses must operate within a regulated framework that includes rules, customs and institutions. Without an adequate regulatory framework, businesses can also be a source of serious human rights violations. Transnational corporations have both the economic power and the capacity to influence State authorities, especially those seeking investments, and to evade national controls as they operate transnationally. Accordingly, businesses can affect virtually all internationally recognized rights and, as economic actors, have unique responsibilities. If those responsibilities are intertwined with State obligations, it makes it almost impossible to tell who is responsible for what in practice.[43]

45. The Guiding Principles on Business and Human Rights stipulate that, although States have the primary duty to protect the rights of individuals under their jurisdiction by enacting and implementing effective laws and regulations to prevent and address human rights violations committed by businesses, and to guarantee access to effective remedies, businesses have a direct differentiated but complimentary responsibility in the area of human rights. The Guiding Principles

[39] Ibid., p. 17.

[40] See Ronen, Y., "Human rights obligations of non-State actors", in *Cornell International Law Journal*, vol. 46, No. 1, art. 2 (2013), p. 22; available at http://scholarship.law.cornell.edu/cilj/vol46/iss1/2.

[41] Ibid., p. 21.

[42] See A/HRC/8/5, para. 2.

[43] Ibid., para. 6.

outline three key elements: the State duty to protect against human rights abuses by third parties, including businesses; the corporate responsibility to respect human rights; and the need for more effective access to remedies. Regardless of their size, industry and place of operation, business enterprises have the responsibility to respect human rights. Therefore, companies must be aware of their actual or potential impacts, prevent and mitigate abuses and address the adverse impacts of their operations.[44] Guiding principle 10 (c) stipulates that States, when acting as members of multilateral institutions that deal with business-related issues, should draw on the Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.

46. In relation to transnational business operations, international solidarity is closely linked to corporate social responsibility. Businesses, including their outsourcing partners, must identify and address the human rights impacts of their products and operations throughout the supply chain. Appropriate resources should be allocated to mitigating the negative externalities of their operations, and information on those impacts should be shared with concerned groups and populations. Collective action through multilateral institutions can help States to level the playing field in terms of ensuring that business enterprises respect human rights. Cooperation among States, multilateral institutions and other stakeholders can play an important role in that regard.[45]

47. In addition to refraining from taking advantage of vulnerabilities in the places where they conduct their operations, assessing their human rights impacts, providing remedies and mitigating their negative externalities, business enterprises and transnational corporations can undertake other commitments or activities to support and promote human rights, which may contribute to the enjoyment of such rights in the communities in which they operate. They may also voluntarily undertake additional human rights commitments through the promotion of particular rights, for philanthropic reasons or to protect and enhance their reputation and image and develop new business opportunities. As documented in the 2012 publication of the Office of the United Nations High Commissioner for Human Rights *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, in some cases national laws and regulations may require that enterprises carry out additional activities to promote human rights. For example, enterprises may identify a need to make social investments, such as in local health care or education, to achieve or maintain support in the surrounding communities for its operations. Supporting human rights also forms part of the commitment undertaken by signatories to the United Nations Global Compact,[46] whose main objective is to create a sustainable and inclusive global economy that delivers lasting benefits to people, communities and markets. That initiative promotes a principled approach to conducting business through the observation of fundamental responsibilities in the areas of human rights, labour, environment and anti-corruption, regardless of the location of the operation.

[44] See A/HRC/17/31, annex.

[45] Ibid.

[46] See *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide* (Office of the United Nations High Commissioner for Human Rights, 2012), p. 14.

48. Conflicting opinions persist as to whether, in particular situations, enterprises may have responsibility that extends beyond respect for human rights and includes seeking to promote them. Although the Guiding Principles focus on the responsibility to respect human rights, it is worth exploring to what extent businesses may have a responsibility to promote human rights by giving back to the communities that patronize those businesses. From an international solidarity perspective, businesses have a positive role to play in promoting sustainable global development by supporting the advancement of the societies in which they operate. The United Nations Global Compact works to ensure that business activity adds value to people's lives and communities and the planet by promoting the alignment of strategies and operations with universal principles of human rights, labour standards and a clean and healthy environment. Similarly, the proposed draft declaration provides an opportunity to delineate both the positive and negative obligations of business enterprises within the framework of their international cooperation and towards the communities, groups and individuals on whom their activities may have an impact.

III. Conclusion

49. **The foregoing discussion of selected issues that emerged from the five regional consultations has not come close to doing full justice to the wide range of relevant topics that need deeper analysis. Nonetheless, it has served the purpose of providing a brief introduction to certain elements in the proposed draft declaration that will be considered in the process of revising the existing text into its final form. The Independent Expert has attempted to avoid turning that discussion into a purely academic exercise, but it must be said that human rights discourse would not be legitimate without referring to the works of eminent scholars whose writings are, for the most part, legal treatises based on rigorous research in the interest of theory-building and -testing.**

50. **The Independent Expert came away from the five regional consultations with an even firmer conviction regarding the feasibility and enforceability of the right to international solidarity as elaborated in the proposed draft declaration. In addition, careful readings of available literature relevant to the issues discussed above serve to support the positions she has taken in that regard. Although it is not appropriate to discuss those positions in the present report, the Independent Expert wishes to reiterate the position she has taken since the beginning of her term as mandate holder: that the right to international solidarity is a claimable right, both feasible and enforceable. It is not surprising why some degree of scepticism persists in the light of certain factors that affect not only the proposed right to international solidarity, but also others known as "collective rights". For example, there may be no reliable and available means of enforcing compliance with the obligations generated by the right to international solidarity. In some cases, the courts may be unwilling or unable to adjudicate on that right.**

51. **The five regional consultations strongly attested to the fact that States already have the working institutions and agencies required for the implementation of the right to international solidarity. It thus appears that resistance to the proposed draft declaration arises from sources other than those working on the ground who apparently have the knowledge and**

experience to make it work in practice. The experiences related by national and regional actors are evidence that although it will take time to surmount certain obstacles, the right to international solidarity can be effectively implemented in culturally diverse ways that will not in any way diminish the standards contained in the proposed draft declaration. This shows that an understanding of human rights cannot exist before the rights themselves. Human rights are a work in progress and come into full light and existence as enforceable claims through the continuous development of their aspects through the hands-on work being done on the ground by local actors.

52. **The Independent Expert draws attention to paragraph 29 above in order to support her reaffirmation that the principle of international solidarity meets the requirements of a legal standard and can thus become a right when the community of States so decides.**